

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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RICARDO LOPEZ,

Plaintiff,

-v-

SGT. EBERHART, et al.,

Defendants.

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U.S. DISTRICT COURT  
W.D.N.Y. - BUFFALO

05-CV-0585E

MEMORANDUM and ORDER

On August 17, 2005, this pro se prisoner civil rights action was transferred to this Court from the Southern District of New York. (Docket No. 4). On October 4, 2005, the Court granted plaintiff's request to proceed *in forma pauperis* and directed plaintiff to file an amended complaint. (Docket No. 5). After this action was dismissed based on plaintiff's failure to file an amended complaint within the time frame set by the Court, the Court vacated the judgment dismissing the complaint because it was apparent that plaintiff had attempted to file an amended complaint timely but because of errors in the address he placed on the envelope enclosing the amended complaint it was returned to him. He then re-mailed the amended complaint to the Court but it was not received until after the time the Court had set for the filing of an amended complaint. (Docket No. 8).

On January 26, 2006--following receipt of the amended complaint and vacatur of the judgment dismissing the complaint--the Court dismissed the amended complaint against certain defendants, see 28 U.S.C. § § 1915(e)(2)(B) and 1915A(b), and directed the Clerk of Court to cause the United States Marshal to serve the summons and amended complaint on defendants Moody, Bartels, Eberhart and Brown. (Docket No. 10). On April 5, 2006,

following the return of completed Marshal Process Receipt and Return Forms ("Marshal Forms") by plaintiff, summonses were issued and the Clerk of the Court forwarded the summonses, amended complaint and Marshal Forms to the Marshals Service for service on the defendants. (Docket No. 10).

On September 5, 2006, after it appeared to the Court that service had not been effected, the Court granted plaintiff an extension of time to serve the summons and amended complaint and again directed the Marshals Service to serve the summons and amended complaint on the defendants. (Docket No. 11). On September 6, 2006, Marshal Forms were forwarded to the plaintiff to complete and return to the Court for service but on May 8, 2007, after not receiving completed Marshal Forms back from plaintiff, the Court issued an Order to Show Cause directing plaintiff to show cause why this action should not be dismissed for his failure to effect service. See Fed.R.Civ.P. 4(m). (Docket No. 12).

On June 12, 2007, plaintiff filed a response to the Order to Show Cause and requested an extension of time to effect service "regarding the [Marshal] Forms the Clerk of the Court sent [him]," because he did not have the money to obtain the "copies" he needed and he was over his allowed advancement for copying costs. He also claimed that he was just released from the Special Housing Unit and is now in a position to earn sufficient money to pay for the copies he needs to accomplish service. (Docket No. 13).

Because plaintiff has shown good cause why he has been unable to effect service of the summons and amended complaint, the Court hereby grants plaintiff an additional **90 days** to effect service of the summons and complaint.

The Court notes that all plaintiff needs to do at this time is complete and return to the Clerk's Office the Marshal Forms and summonses that he will be forwarded with a copy of

this Memorandum and Order. He does not need to make copies of these documents before returning them to the Court. Once the Court receives the Marshal Forms and summonses back from plaintiff, the Clerk of the Court will then issue the summonses and forward the summonses, copies of the amended complaint and Marshal Forms to the Marshals Service for service on the defendants. Accordingly,

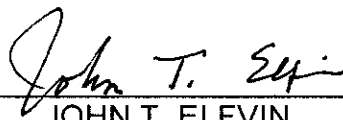
IT IS HEREBY ORDERED that plaintiff has shown cause why this action should not be dismissed for his failure to effect service pursuant to Fed.R.Civ.P. 4(m); his letter motion for an extension of time to serve the summons and amended complaint (Docket No. 13) is granted, and he is granted an additional 90 days to effect service of the summons and amended complaint on the defendants;

FURTHER, that the Clerk of the Court is directed to again forward to plaintiff the requisite number of Marshal Forms and blank summonses for him to complete and return to the Court immediately; and

FURTHER, the Clerk of the Court is directed to cause the United States Marshals Service to serve the summons and amended complaint on defendants Moody, Bartels, Eberhart and Brown.

SO ORDERED.

DATED: Buffalo, New York  
June 27, 2007

  
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JOHN T. ELFVIN  
UNITED STATES DISTRICT JUDGE